**THE HON'BLE SRI JUSTICE P.S.NARAYANA**

**Writ Petition No.23564 of 2007**

**Date: 23rd November, 2007**

Between :-

M.A.Kareem .. Petitioner

And

State Bank of India
Rpd.by its Deputy General Manager,
Stressed Assets Management Branch,
Patny Circle, Secunderabad and 2 others .. Respondents

**THE HON'BLE SRI JUSTICE P.S.NARAYANA**

**Writ Petition No.23564 of 2007**

**ORDER:-**

Heard Sri Ch.Dhanamjaya representing writ petitioner and Sri Satyanarayana representing respondents 1 to 3.

2. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents in issuing the confirmation letter dt.25-10-2007 to the extent that the auction schedule property does not include factory sheds and labour quarters and also forfeiting the amount already deposited by the petitioner contrary to the schedule conditions mentioned in the Auction Notification dt.17-9-2007 published in Eanadu daily dt.19-9-2007 without considering the petitioner's representation dt.2-11-2007 as illegal, contrary to law and violative of principles of

natural justice and for consequential order directing the respondents to deliver the auction schedule property as mentioned in the item No.2 of Auction Notification dt.17-9-2007 published in Eanadu daily. Dt.19-9-2007, and pass such other suitable orders.

3. It is stated that pursuant to the paper publication dt.17-9-2007 published in Eanadu daily, Nizamabad Edition dt.19-9-2007 issued under the Securitization Act, 2002, stating that the borrowers viz., Amruthlal Company, Balram Industries, Jyothi and Company, failed to discharge the loan amount and as such, the 2nd is putting the schedule property for sale in a public auction, scheduled to be held on 22-10-2007 and 24-10-2007 at 11.30 a.m., respectively at 3rd respondent's place, the petitioner along with his brother and sister-in-law by name M.A.Nayeem and Nikath Naz, have submitted their ternders quoting Rs.2,09,51,000/- and that the upset price is fixed as Rs.205.45 lakhs and the date of auction was 24-10-2007. Further it is stated by the petitioner that he submitted his tender in respect of item No.2 of the auction notification, where under it is stated that the schedule property is an open land, measuring 14,512.63 sq.yds., consisting of a building and factory sheds therein as it is condition and that the condition of the auction clearly states that the schedule property is an open land consisting of building and factory sheds, excluding plant and machinery and accessories. It is further stated by the petitioner that on the day i.e., on 15-10-2007 fixed for

verification, they all went to the premises and found the condition of the schedule land and also the building, plant, machinery and also accessories and after inspection only, they filed their tender under a hope that the auction property is consists of vacant site including building and factory sheds. In fact, the respondents herein gave a wide publicity publishing the pamphlets narrating the same conditions that are incorporated in the auction notification. It is also stated that as per the condition No.3 of the auction condition, the highest bidder has to deposit 25% of the total bid amount within 15 days and before participating in the tender, 10% of the upset price is to be made and the petitioner had complied with all the conditions as per the notification. Further it is stated by the petitioner that as per the tender conditions, he had deposited 25% of the offered price i.e., Rs.52,37,750/- out of the offered price quoted by him i.e., Rs.2,09,51,000/- and accordingly the respondent bank has given a letter confirming the sale by letter dt.25-10-2007 stating that the balance amount of Rs.1,57,13,250/- is payable by them to the Bank, within 15 days from the date of auction i.e., on or before 8-11-2007, failing which all the amounts paid by them will be forfeited and auction for the same property will be conducted again and he will not have any claim whatsoever further on the property or the sum received by the Bank. The petitioner also stated that he received the said letter on 2-11-2007 and immediately, after receipt of the said letter, he was very much shocked to see that the said confirmation letter states that the auction property is

only a vacant site except plant, machinery and accessories, factory sheds and labour quarters, contrary to the auction condition and that immediately he personally approached the respondent No.1 herein and brought to his notice about the conditions of the auction notification and variations of the confirmation letter of the 2nd respondent. It is also stated that the respondents No.1 and 2 expressed their inability stating that they are able to give only the vacant land but not the building and factory sheds as stated in the auction notification, having admitted their mistake and that the respondents 1 and 2 have also admitted the mistake committed by them in giving the confirmation contrary to the auction notification at the same time they said that they cannot alter the confirmation letter unless they get necessary clarification from the Chairman of the Bank and thereupon, the petitioner had given a written representation to the respondents requesting them to resolve the dispute and ambiguity with regard to the building and factory sheds by accepting his remaining balance of amount giving possession of the property as mentioned in the auction notification. It is also averred that they participated in the auction with a hope that the schedule property consists of vacant site, building, factory sheds therein as per the schedule and conditions mentioned in the auction notification and also in the pamphlets issued and accordingly, the petitioner deposited the amount, as per the auction conditions. Further it is stated that if the building and factory sheds are taken out or allowed to be

demolished, the worth of the vacant site would be around Rs.1.00 crore only and the respondents having issued notification in such a manner giving an impression to the bidders to participate in the auction for the schedule property consisting of vacant site, building and factory sheds, are estopped from taking a different stand that they are not going to give delivery of the possession of the building and factory sheds except the vacant site and hence the action of the respondents is illegal, arbitrary and violative of principles of natural justice. It is also stated that the respondents having given the particulars of the schedule property, they cannot go back and take a different stand which is contrary to the well-established principles of law. It is also stated that as per the tender conditions, the petitioner has to deposit the rest of the amount within 15 days from the date of confirmation i.e., on or before 8-11-2007 and that unless the dispute is resolved with regard to auctioned property concerned, the petitioner cannot deposit the amount on 8-11-2007. Further it is stated that if the respondents are prepared to deliver the possession of the property as mentioned in the auction notification i.e., vacant land measuring 14,512.63 sq.yds., of the land, building and factory sheds, the petitioner is prepared to deposit the rest of the amount, before 8-11-2007, as per the auction conditions. The petitioner also stated that the respondents are not willing to deliver the building along with factory sheds, with the open site as per auction conditions, which fact has come to their knowledge only through their letter dt.25-10-2007

and also negotiations held on 2-11-2007 and if they failed to deposit the rest of the amount, the respondents are bent upon to forfeit the amount deposited by him and they are going to conduct auction and if the respondents are allowed to proceed with their illegal action of forfeit, he will be put to irreparable loss for the fault of the respondents. It is also averred by the petitioner that there is no mistake committed by them and they strictly adhere to the conditions mentioned in the auction notification and unless a direction is given to the respondents not to forfeit the amount deposited by him till the dispute is resolved or till the respondents have fully complied with the auction conditions i.e., giving possession of the vacant site with building, factory shed, he will be put to loss and hardship. Hence, the action of the respondents is illegal and contrary to the auction conditions mentioned in the Notification. In such circumstances, the petitioner approached this Court praying for appropriate reliefs.

4 Counter affidavit is filed and a reply affidavit also has been filed.

5. In the counter affidavit it is averred in para 3 that the dispute in the Writ Petition is whether sheds are included in the property auctioned and in this regard it is stated that initially initially by notice in the newspaper, auction was proposed excluding the Plant & Machinery but not sheds. During the course of time before auction, the mortgagor was alleging that the sheds are not mortgaged hence he is entitled to remove the same. The Bank has been contending that since the plant and machinery is not

hypothecated, he can remove the same but not sheds. The borrower was trying to take an advantage as by oversight, in the reply notice, the Bank has asked the borrower to remove the plant and machinery and mentioned sheds also. Further it is stated that in order to avoid litigation and delay in recovery, before the auction was conducted both the bidders were informed that the sheds are not part of the property for auction and that both the bidders signed the letter of terms and conditions of auction before the auction itself, which makes it clear that the sheds were excluded and also it is stated that the auction was postponed until 1.00 p.m. providing time to the auctioneers to decide whether to participate in bidding and having agreed the terms and conditions the bidding was conducted at 1.00 p.m., and the minutes dated 24-10-2007 acknowledged by the petitioner clearly mentioned exclusion of sheds and the relevant portion hereunder is as :-

> "It has been clarified that the property put to auction does not include Plant and Machinery, accessories and also factory sheds and labour quarters. The auction officer postponed the auction till 1.00 p.m."

It is also averred that by the above, the petitioner is well aware of the fact that the sheds are excluded. It is further stated that the petitioner has suppressed the above material facts, therefore, the Writ deserves to be dismissed in limini and in this regard the Supreme Court in ***Lights Ltd., v. State Bank of India (2007 (2) DRTC 401 (SC)*** it was held that *"if there is suppression of material*

*facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petitioner and dismiss it withoug entering into the merits of the matter".* Further it is also averred that the litigation regarding auction and other issues relating to property including sheds is pending before the DRT vide Securitisation Appeal No.168/2007 filed by the borrower and that the petitioner is entitled to implead as a party and agitate his rights before the DRT as a;; SARFAESI Cases fall under DRT jurisdiction and that therefore this petitioner is not maintainable, as the effective alternative remedy is available before the Debts Recover Tribunal, Hyderabad. Further it is stated that the respondent Bank has effected the publication in Eenadu Daily for the auction of the properties to be held on 22-10-2007 and 24-10-2007 at 11.30 a.m., and the petitioner had participated in the auction held by the Bank on 24-10-2007. It is also stated that the respondent Bank has stated in the publication that the property proposed to be sold on 24-10-2007 is excluding the Plant and Machinery. It is further stated that after publication was effected, a notice was issued to the borrower on 29-9-2007 demanding him to remove the Plant and Machinery out of the premises within 15 days of the said notice, failing which, the Bank will have no option except to proceed with sale of the Plant and Machinery along with the mortgaged property and the sale proceeds realized at the time of the sale amount relating to Plant and Machinery will be kept in deposit separately etc and in response to the said notice, the borrower has got a

legal notice issued through his Counsel Sri R.Jagadeeswara Rao dated 13-10-2007 alleging that the Bank is proposing to sell the Plant and Machinery and also the sheds existing on the mortgaged property and claimed Rs.66,00,000/- towards the value of the Plant and Machinery and sheds etc., which are mortgaged/hypothecated to the Bank and that in response to the said notice, a reply notice has been sent to the said Counsel duly clarifying to the borrower that the Bank has no intention to sell the property which is neither ortgaged/hypothecated to the Bank viz., the Plant and Machinery, sheds etc., and that the borrower was requested to remove the same before the date of auction and the Bank is not liable to pay any amount much less the amount of Rs.66,00,000/- as claimed by him in the said notice. Under the above circumstances, the respondent Bank was required to proceed with sale of the land and building excluding the sheds, Plant and Machinery etc. It is also averred that at the time of auction, the officials of the respondent have categorically informed the prospective bidders including the petitioner herein that the property put for sale is exclusive of sheds lying on the land and also the Plant and Machinery. Further it is averred that the petitioner, who is well aware of the said fact, had submitted his tender/offer form and in the said form also he had stated that the property put for sale is land and building excluding the sheds and Plant and Machinery. It is also stated that the proceedings of the auction were also reduced into writing in the Book

maintained for the said purpose and in the said proceedings also it has been categorically mentioned that the property sold is excluding the sheds, labour quarters and Plant and Machinery and on the said proceedings also the petitioner being the highest bidder had signed in toke of the acceptance of the said proceedings and even in the letter issued to the petitioner confirming that he is the highest bidder, it has been specify mentioned that the property sold is excluding the sheds, labour quarters, Plant and Machinery. Further it is also averred that the auction was held after duly apprising the petitioner and other bidders that the property proposed to be sold is only land and building excluding Plant and Machinery, sheds and labour quarters and that the question of the petitioner pointing out the variations to the Bank and admission of the mistake by the officials of the respondent Bank and informing the petitioner that the confirmation letter cannot be altered without the consent of the Chairman of the Bank etc., do not arise and they are all false and are invented by the petitioner for the purpose of the Writ Petition. Further it is stated that the property was sold along with the buildings existing on the land and that the borrower was demanded to remove the Plant and Machinery and also the sheds but not the building constructed on the land. It is also stated that the petitioner who is well aware of the same is estopped from raising the pleas that he was given impression to participate in the bid for the property consisting of land, building and also factory sheds and also stated that it now understood that

the petitioner is not ready with balance of consideration and is trying to prolong the proceedings and that this intention can also be gathered from the letter of the petitioner dated 2-11-2007 seeking two months time for paying the balance of the bid amount. It is also averred that the petitioner is ready with the balance amount, to show his bona fides, he could have deposited the amount or produced any evidence to show his readiness and that the intention of the petitioner is clear from the averments that he was not ready with the balance amount and to cover the same, he has invented the alleged dispute to throw the blame on the Bank and that there are no bonafides on the part of the petitioner and that he cannot seek any equities from this Court. It is also further stated that as the petitioner failed to deposit the balance amount nor produced any evidence to show his readiness to this Court, he is guilty for breach of the terms of the auction and that the advance amount paid is liable to be forfeited as per the terms of auction.

6. A reply affidavit is filed again reiterating the same stand taken in the affidavit filed in support of the Writ Petition. It is averred that *the respondent had admitted in para 3 of its affidavit that they have committed mistake due to oversight in its reply notice to the borrower for removal of shed and hence, that the respondent Bank having had the knowledge about the controversy about the schedule of the property, in a mischievous manner published the auction notification in papers having the gullible people like the petitioner and this fact is also not*

*mentioned in tender form nor in the minutes and that the minutes of the auction are also not clear. It is also stated that the respondent had not complied with the terms and conditions of the auction notification and the petitioner never suppressed any material facts as alleged and in fact, that the respondent is guilty of latches in suppressing true facts. It is also averred by the petitioner that the respondent intentionally suppressed the fact of filing S.A.No.168/2007 by the borrower with regard to the same issue in the auction notification and with subsequent proceedings and also stated that if this fact is mentioned, he would have given a thought twice before participating in the auction and that this itself is sufficient that respondent had not done the entire transaction fairly. The petitioner also stated that he has no knowledge about the pendency of S.A. in Debt Recovery Tribunal and it is also stated that even before the auction date, the controversy regarding schedule was revolving between the borrower and the Bank. If that is so that the respondent should have given revised auction notification cancelling the earlier one. It is nowhere stated that the factory sheds are excluded from the auction. The respondent wantonly interpolated the auction proceedings by including Factory sheds. The petitioner also stated that he is not wordy wise and he is not conversant with English except subscribing his signature and that the respondent Bank obtained his signature and that he endorsed his signature under the impression that it is only the auction confirmation proceedings. The respondent has not eve*

*explained to the petitioner about the same and that there are no labour quarters as alleged. Further it is stated that it is false to alleged that the respondent had appraised that the property proposed to be sold is only land and building excluding Plant and Machinery, shed and labour quarters. Further it is stated that the borrower had disposed part of land subject matter of auction with clear knowledge of the Bank. Some of the details are as below:-*

| Sl. No. | Sy. No. | Plot No. | Extent of land Sq.Mtrs | Document No. | Date of Document | Name of Purchaser |
|---|---|---|---|---|---|---|
| 1 | 2842 | 2/4 | 148.63 | 2534/99 | 14.5.99 | Ahesanullah Khan |
| 2 | 2842 | 11 | 414.00 | 2532/99 | 14.5.99 | Ishay Firdose |
| 3 | 2842 | 12 | 222.00 | 3887/99 | 24.7.99 | Khaja Nizamuddin |
| 4 | 2845 | 7 | 414.00 | 6760/99 | 1.11.99 | Md.Abdul Rasheed |
| 5 | 2858 | 20 | 83.61 | 2535/99 | 14.5.99 | Sd.Mujibunnisa |

*It is further averred that may other plots were also disposed under Sy.No.2842, 2844, 2847, 2858, 2845 which land is sold in auction. It is clearly mentioned in quotation form and other documents of the bank and that the Bank had not approached the Court with clean hands and the facts were not disclosed and that the Bank with malafide intention of recovering money/debt of borrower through auction sale is misleading the pubic through*

*private recovery agency i.e.,M/s.Sisir and Ravi & Co., and that they had falsely got published the auction notice and subsequently colluded with borrower and deleted the factory sheds, Plant and Machinery. It is further stated that in case of change of terms of auction, the notification has to be published afresh mentioning the new terms else the earlier notification shall be terms as valid and accordingly, property has to be conveyed and that the quotation form does not disclose the exclusion of any of the items. Had it was settled earlier as mentioned in counter, the same would have been mentioned at proper place. In view of inclusion of Government land (canal boundary land) into the mortgage land by exclusion of sheds, labour quarters, buildings etc., the Bank acted in malice and to cause of Rs.1 crore to the auction purchasers and as such, it is expedient to get two months time to settle the terms with Bank and in the meantime the Bank may be directed to sort out the above issue and safeguard the interest of the auction purchaser.*

7. As can be seen from the respective stands taken by the parties, there are certain factual controversies between the parties. Even otherwise, it is specifically brought to the notice of this Court that the borrower filed Securitisation Appeal No.168/07 and the same is pending before the Debt Recovery Tribunal, Hyderabad. It is also

stated that inasmuch as, the said borrower had obtained stay, the Banking Institution also is unable to further proceed in this matter. However, it is stated that the Banking Institution is taking steps to get the said order vacated. In the light of the respective stands taken by the parties, inasmuch as, it is brought to the notice of this Court that by virtue of the stay granted by the Debt Recovery Tribunal, Hyderabad in Securitisation Appeal No.168/07, this Court is of the considered opinion that the Writ Petition be disposed of giving liberty to the writ petitioner to move appropriate application before the Debt Recovery Tribunal, Hyderabad and let the Debt Recovery Tribunal, Hyderabad, entertain the respective stands which had been taken by the parties before this Court and decide this question also while disposing of the Securitization Appeal No.168/07 and in the facts and circumstances, within a period of two months from the date of receipt of this order. The relevant questions which may be raised by these respective parties also may be gone into by the Debt Recovery Tribunal, Hyderabad. Till then, status quo granted by this Court to be maintained.

8. Accordingly, the Writ Petition is disposed of. No order as to costs.

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Justice P.S.Narayana

23rd November, 2007

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